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Implications of the New Mitigation Rule in Florida

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Goals of the New Rule



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- Provide more mitigation opportunities
- Promote consistency and predictability
- Provide similar standards and criteria for mitigation projects
- Improve ecological success of mitigation projects

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What is not affected



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- Jurisdiction
- Sequencing
- When to do compensatory mitigation



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Implications of the New Mitigation Rule

Adds “Soft” Preference Hierarchy

1. Mitigation Banks: larger parcels, rigorous planning, site/work done in advance
2. In Lieu Fee: usually identifying high priority needs in watershed
3. Permittee Responsible



Implications of the New Mitigation Rule



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Many of the concepts already practiced in FL

- There are currently 40 mitigation banks available for use throughout FL, providing many mitigation opportunities to the development community
- Past FI practices and the current Rule emphasize the watershed approach to location siting
- New Rule patterned after SAJ “Green book” (IRT = MBRT)
- Currently, there are 5 In Lieu Fee programs available in south FL where the program sponsor is a govt agency or non-profit natural resource management agency

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Implications of the New Mitigation Rule



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Many of the concepts already practiced in FL

- Project Managers generally show preference for Mit Banks & In Lieu Fees (where available)
- Use of functional assessments that include risk and temporal lag
- Use of Watershed approach and alignment w/ state on compensatory mitigation to some degree
- Standardized specific conditions for compensatory mitigation

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Implications of the New Mitigation Rule



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Part of the new Rule included a change in the 1986 regulations (33CFR325.1(d)(7)).

A complete application must now include –

- a statement on avoidance and minimization
- a statement regarding the compensatory mitigation plan or why the applicant believes compensation is not required.



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Implications of the New Mitigation Rule



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Final mitigation plan must be approved by Corps prior to issuance of an individual permit or commencement of work under a general permit.

Mitigation Plans must include the 12 fundamental components noted at 33 CFR 332.4(c). Handout available

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Implications of the New Mitigation Rule



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**These new regulations may
require additional
documentation in the Corps'
administrative record**



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Implication for Mitigation Banks



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- **Required timelines for Corps and IRT are intended to facilitate faster reviews than in the past**
- **Existing banks and those approved prior to July 9, 2008 are grandfathered**
- **Instrument modifications of existing banks will trigger new requirements**

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Implication for In Lieu Fee Programs

Second in the “soft” preference hierarchy

ILF process will mirror mitigation bank process

- Compensation Planning Evaluation & Prospectus
- IRT process
- Approved Instrument
- Initiation of mitigation within three growing seasons

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Implication for In Lieu Fee Programs



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- Existing In lieu fees will need to comply by June 9, 2010, unless additional time is granted by the DE
- Can only be established by governmental or non-profit entities
- Advanced Credits – establish cap on number of credits that can be sold before commencing mitigation activities

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Implications for Permittee Responsible Mitigation



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- Last in the hierarchy of preference — may result in instances where requirements differ between federal & state or local regulatory agency
- Corps Project Managers will need to focus on strategic site selection to provide successful mitigation projects (33CFR332.3(d))



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Implications for Permittee Responsible Mitigation



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- Implications for developers on large parcels who want to provide onsite mitigation; Preference for mit banks may result in combination of offsite and onsite mitigation
- Documentation in the administrative record must include justification for permittee responsible mitigation & for offsite or out of kind mitigation

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Jacksonville District Initiatives



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- To ensure consistency, all future mitigation banks and ILF will be processed by a specialized mitigation banking team located in Jacksonville
- Credit tracking for all mitigation banks and ILF will be centralized over time and tied to RIBITS

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